

## 37 Am. Jur. 2d Fraud and Deceit § 20

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### Fraud and Deceit

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## II. Elements and Requisites

### A. Basis of Action

#### 1. In General

## § 20. Generally; actionable fraud in contract

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1 to 7, 26

The law requires good faith in every business transaction and does not allow one to intentionally deceive another by false representations or concealments.<sup>1</sup> If such representations or concealments are made, the law will require the misrepresenting party to make good such representations.<sup>2</sup>

Contractual fraud applies to either deceit in the formation of a contract or deceit in the performance of contractual obligations.<sup>3</sup> A mere breach of contract does not constitute fraud.<sup>4</sup>

### Observation:

An action for fraud may be precluded by the remedy of an action in contract for breach of a term of the contract, as where there is a false representation of performance by one party which in turn induces the other party to make payment under the contract when, in fact, there has been no performance or insufficient performance to warrant payment under the contract.<sup>5</sup>

The essentials of actionable fraud are generally the same whether fraud is used as the basis of an action for damages<sup>6</sup> or as a defense.<sup>7</sup>

In an action based on false representations, a distinction should be made between the elements of fraud and the evidence required to establish them.<sup>8</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Under Ohio law, plaintiff can maintain a tort claim for fraud in the inducement or promissory fraud occurring in a contractual relationship because both theories raise separate and independent legal duties that are considered outside of the contract. [Kehoe Component Sales Inc. v. Best Lighting Products, Inc.](#), 933 F. Supp. 2d 974 (S.D. Ohio 2013).

### [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [Boggs v. Bosley Medical Institute, Inc.](#), 228 Ga. App. 598, 492 S.E.2d 264 (1997).
- <sup>2</sup> [Boggs v. Bosley Medical Institute, Inc.](#), 228 Ga. App. 598, 492 S.E.2d 264 (1997); [Guaranty Mortg. Co. v. Flint](#), 66 Utah 128, 240 P. 175 (1925).
- <sup>3</sup> [P.C.M.E. Commercial, S.E. v. Pace Membership Warehouse, Inc.](#), 952 F. Supp. 84 (D.P.R. 1997) (applying Puerto Rico law).
- <sup>4</sup> [Dunn v. Menassen](#), 913 S.W.2d 621 (Tex. App. Corpus Christi 1995), writ denied, (June 28, 1996).
- <sup>5</sup> [Fertico Belgium S.A. v. Phosphate Chemicals Export Ass'n, Inc.](#), 100 A.D.2d 165, 473 N.Y.S.2d 403 (1st Dep't 1984).
- <sup>6</sup> [Wilson v. Byrd](#), 79 Ariz. 302, 288 P.2d 1079 (1955); [Latta v. Robinson Erection Co.](#), 363 Mo. 47, 248 S.W.2d 569 (1952).
- <sup>7</sup> § 369.
- <sup>8</sup> [Benz v. Zobel](#), 255 Wis. 542, 39 N.W.2d 713, 13 A.L.R.2d 795 (1949).  
As to proof of such elements, see §§ 473 to 478.